THE STATE OF TEXAS
COUNTY OF HARRIS

AGREEMENT FOR PROFESSIONAL AUDITING SERVICES

I. PARTIES

A. Address

THIS AGREEMENT FOR PROFESSIONAL AUDITING SERVICES ("Agreement") is made between the CITY OF HOUSTON, TEXAS ("City"), a home rule city of the State of Texas, and DELOITTE & TOUCHE LLP ("Auditor"), a Delaware registered limited liability partnership doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

Director of Finance or Designee City of Houston P.O. Box 1562 Houston, Texas 77251-1562 **Auditor**

DELOITTE & TOUCHE LLP 1111 Bagby, Suite 4500 Houston, Texas 77002 Attention: Mr. Ross Johnson

The Parties agree as follows:

B. <u>Table of Contents</u>

This Agreement consists of the following sections:

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The ab	ove-de	escribed sections and exhibits are incorporated into this Agreement.					
D.	Controlling Parts						
If a co	nflict a	mong the Sections and Exhibits arises, the Sections control over the					
Exhibi	its.						

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

Auditor	
By: Cura T Name: Ross T Title: Directo TAX ID NO	33891517
CITY OF HOUS Signed by:	,
Mayor	White anayda llelet
COUNTERSIGNE	D. Para
City Controller	Mun D. Appel

DELOITTE & TOUCHE LLP

ATTEST/SEAL:

City Secretary

APPROVED:

Director, Finance Department

APPROVED:

Calvin D. Wells, Deputy Director

City Purchasing Agent

APPROVED AS TO FORM:

Assistant City Attorney

L.D. File No. 0370900029001

5-29-09

DATE COUNTERSIGNED:

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Allocated Funds" is defined in Section IV(E).

"Auditor" is defined in the preamble of this Agreement, which definition includes its successors and assigns.

"Audit Committee" means the Finance Director and the City Controller or an audit committee as established by the Houston City Council.

"Basic Services" is defined in Exhibit "A"

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Controller" shall mean the City Controller of the City of Houston.

"City Purchasing Agent" shall mean the City Purchasing Agent of the City of Houston.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Director of Finance, or the person he or she designates.

"Document" means reports, charts, analyses, maps, letters, tabulations, exhibits, computer databases and diskettes, notes and other work products obtained by Auditor from the City or prepared by the Auditor as a task under this Agreement. "Document" does not include, however, the Auditor's working papers, proprietary methodologies, software or databases.

"Fiscal Year" means the City's Fiscal Year which runs from July 1 through June 30.

"Generally Accepted Accounting Principles" means accounting principles generally accepted in the United States of America.

"Generally Accepted Auditing Standards" means auditing standards generally accepted in the United States of America.

"Mayor" means the Mayor of the City or his designated representative.

"Notice to Proceed" means a written communication from the City Purchasing Agent to Auditor instructing Auditor to begin performance.

"Out-of-Pocket Costs" means the ordinary and reasonable costs of copying, printing, postage, messengers and delivery services incurred by the Auditor in the course of its performance of services under this Contract. Out-of-pocket cost includes the ordinary and reasonable cost of travel and per diem expenses for travel authorized by the Director.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Special Services" is defined in Exhibit "A".

III. DUTIES OF AUDITOR

A. Scope Of Services

Auditor's performance under this Agreement is divided into 2 categories of services: 1) Basic Services and 2) Special Services, as described in the attached Exhibit "A". The Scope of Services also includes the matters set out in this section. In consideration of the payment specified in this Agreement, Auditor shall provide all labor, materials, and supervision necessary to perform the Basic Services and, if requested and agreed to by Auditor, the Special Services in each case, as set forth in a separate engagement letter in the form similar to the attached Exhibit "H" (each, an "Engagement Letter"), entered into by the City and the Auditor with respect to such services. Engagement Letters providing for Auditor to perform Basic Services shall be substantially in the form set forth in the attached Exhibit "H".

B. <u>Coordinate Performance</u>

Auditor shall coordinate its performance with the Director and other persons that the Director designates.

C. <u>Notice to Proceed</u>

Auditor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

D. Reports

Auditor shall provide progress updates as requested by the Director.

E. Schedule Of Performance – General

1. Time of Performance

Auditor's services shall commence upon the date specified in a written Notice to Proceed letter from the City Purchasing Agent, shall be diligently performed thereafter, and shall be completed within the following specified times, as specified below under section E.2, unless an extension of time is agreed to by the Director, as specified below.

2. Due Dates

Except as specifically set forth in an Engagement Letter, due dates for subtasks and deliverables are given in the table below. Dates are the same for each Fiscal Year that the Auditor provides Basic Services and assumes that the City's personnel provide the underlying reporting documents based on an agreed upon timetable that allows ample time for the auditors to complete their work.

- a. Task 1 Audit of Comprehensive Annual Financial Report (CAFR) for preceding Fiscal Year:
 - i. CAFR (Including Schedules of Federal and State Financial Assistance)
 - Draft Report: November 27
 - Issue Final Report: On or before December 18
 - ii. Houston Airport System CAFR
 - Draft Report: November 27
 - Issue Final Report: On or before December 18

- iii. Auditor Proposed Adjusting Journal Entries
 - Submit to City Controller for review and approval prior to Draft CAFR
- iv. Management Recommendation Letters
 - Draft Final Letter: On or before January 23
 - Issue Final Letter: On or before January 31
- b. Task 2 and Task 3 (Single Audit):
 - i. Evaluate the Overall Presentation of the Schedules of Federal/State Financial Assistance.
 - Completion: Same as CAFR dates
 - ii. Accountant's Reports OMB Circular A-133
 - Draft Reports: Prepare and hold exit conference with Departments by December 18
 - Draft Reports: Prepare and hold exit conference with Director of Finance and City Controller by December 15
 - iii. If requested by the City, **Follow-up** 90 days after issuance of the Single Audit.
 - Issue Letter: March 15
- c. Task 4 Agreed-upon Procedures for the Texas Commission of Environmental Quality (TCEQ)
 - Draft Report: Within 60 days of the City providing the requisite information

3. Time Extensions

Upon request of the Auditor, the Director shall grant time extensions:

- a. to the extent of any delays caused by the City or other agencies with whom the work must be coordinated and over whom the Auditor has no control (but only to the extent that the exercise of due diligence and care on the part of the Auditor within the scope of its work under this Agreement could not have avoided such delays), and
- b. to the extent of any delays caused by Force Majeure as that term is defined herein.

The extension must be in writing but does not require amendment to this Agreement. Auditor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

F. Payment Of Subcontractors

Auditor's Duty to Pay

Auditor shall make timely payments to all of its subcontractors supplying labor, materials or equipment for the performance of this Agreement, in accordance with the provisions of Chapter 2251 of the Texas Government Code. AUDITOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY CLAIMS OR LIABLITY ARISING OUT OF AUDITOR'S FAILURE TO MAKE THESE PAYMENTS. Auditor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

G. RELEASE

AUDITOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY", FOR THE PURPOSES OF THIS PARAGRAPH ONLY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR TANGIBLE PERSONAL PROPERTY SUSTAINED BY THE AUDITOR IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY THE AUDITOR UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S CONCURRENT NEGLIGENCE.

H. <u>Insurance</u>

Auditor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must include the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Auditor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per claim; \$1,000,000 aggregate
- (4) Automobile Liability insurance (for vehicles Auditor uses in performing under this Agreement, including Owned, Non-owned, and Hired Auto coverage)
 - \$1,000,000 combined single limit
- (5) Employer's Liability:
 - Bodily injury by accident: \$100,000 (each accident)
 - Bodily injury by disease: \$100,000 (policy limit)
 - Bodily injury by disease: \$100,000 (each employee)

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period

unless otherwise indicated.

All insurance policies (except for Professional Liability) must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that

insurers shall endeavor to give 30 days advance written notice to the City before any of its policies are canceled. In addition, Auditor shall give the City 30 days advance written notice of any cancellation, material changes or nonrenewal of any of its policies that would result in Auditor not maintaining insurance coverages in the amounts set forth in sub-sections (1)-(5) of this Section III(H) during the term of this Agreement. Within the 30 day period, Auditor shall secure other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. For the avoidance of doubt, notwithstanding the cancellation, material changes or nonrenewal of any insurance policy that Auditor may have in effect as of the date hereof, Auditor shall maintain insurance coverages in the amounts set forth in sub-sections (1)-(5) of this Section III(H) during the term of this Agreement. If Auditor does not comply with this requirement, the Director, at his or her sole discretion, after the expiration of the 30 day period set forth in the preceding sentence, may

- (1) immediately suspend Auditor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Auditor under this Agreement.

I. Warranties

Auditor's performance shall conform to the generally accepted auditing standards, applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget ("OMB") Circular A-133, *Audits of States, Local Governments and Non-profit Organizations*.

J. <u>Confidentiality - Protection Of City's Interest</u>

- (1) Auditor, its employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in confidence. Except in the performance of services hereunder or in accordance with the terms of this Agreement, Auditor, its employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. This obligation of confidentiality shall not apply to information that (i) is or becomes publicly available by other than a breach hereof (including, without limitation, any information filed with any governmental agency and available to the public); (ii) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or other legal process, or by law, rule or regulation, or by applicable regulatory or professional standards, provided that prior to such disclosure by the Auditor (to the extent permitted by applicable law, rule or regulation), the City is given reasonable advance notice of such order and an opportunity to object to such disclosures; or (iii) is disclosed by the Auditor in connection with any judicial or other proceeding involving the City and Auditor (or any partners, principals, directors or employees of Auditor) (whether or not such proceeding involves any third party) relating to Auditor's services for the City or this Agreement.
- 2) Auditor shall carry out its obligations in this Agreement using the same degree of care that it uses in protecting its own confidential information, but at least a reasonable degree of care.

K. Use Of Work Products

Subject to the terms hereof, the City may internally use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products

(collectively, the "Documents") that Auditor prepares or obtains under this Agreement for delivery to the City. However, except as required by the Texas Public Information Act, any Documents that identify an underlying source shall not be submitted or reviewed by the City unless Auditor can to its satisfaction redact all information from such Documents that identifies the source(s) of the information.

In addition, upon the City's request, the Auditor shall provide the City Controller with detailed supporting schedules, flow charts or other analysis reasonably necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report, however the use of work products or Documents does not apply to the Auditor's working papers, which are considered the proprietary information of the Auditor.

L. <u>Licenses And Permits</u>

Auditor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for the performance under this Agreement. Auditor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license having a material adverse effect on the performance under this Agreement.

M. Compliance With Laws

Auditor shall comply with all state and federal laws and governmental regulations and the City Charter and Code of Ordinances in effect as of the date hereof only to the extent applicable to its performance under this Agreement.

N. Compliance With Equal Opportunity Ordinance

In the performance under this Agreement, Auditor shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

O. <u>MWBE Compliance</u>

In the performance under this Agreement, Auditor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Auditor shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. Auditor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them in the performance under this Agreement.

Auditor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D".

P. <u>Drug Abuse Detection And Deterrence</u>

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Auditor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

- (2) Before the City signs this Agreement, Auditor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - (a) a copy of its drug-free workplace policy,
 - (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
 - (c) if applicable (e.g. no safety impact positions), the Certification of No Safety

 Impact Positions, substantially in the form set forth in Exhibit "F."

If Auditor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." For the avoidance of doubt, Auditor shall not be required to file a Drug Policy Compliance Declaration if Auditor has filed the Certification of No Safety Impact Positions. If applicable, Auditor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Auditor begins work under this Agreement.

- (3) Auditor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Auditor's employee work force.
- (4) Auditor shall require that its subcontractors comply with the Executive Order, and Auditor shall secure and maintain the required documents for City inspection.

Q. <u>Conflicts Of Interest</u>

The Auditor's personnel performing services hereunder shall not represent any other client in any matter that would constitute a conflict of interest under the conflict of interest rules of the American Institute of Certified Public Accountants.

R. Access To Working Papers By Regulators

In accordance with the requirements of Government Auditing Standards, the Single Audit Act Amendments of 1996, and the State of Texas Uniform Grant Management Standards ("UGMS"), the Auditor is required to make all audit-related documents, including auditor's reports, working papers, and management letters, available to a federal or state agency or the Comptroller General of the United States upon their request for their regulatory oversight purposes. If such a request is made, the Auditor shall inform the City prior to providing such access. The working papers for this engagement are the property of the Auditor and constitute the Auditors' confidential information. Auditor may request confidential treatment of Auditor information. The City hereby grants Auditor permission to provide access to and to make and permit others to make photocopies of all auditrelated documents, including auditor's reports, working papers, and management letters, to representatives of the United States General Accounting Office or other appropriate government audit staffs under the supervision of the Auditor personnel and at a location designated by the Auditor. If photocopies are requested, the Auditor shall mark all information as confidential and maintain control over the duplication of all information. The working papers relating to this audit shall be retained by the Auditor for a minimum of three years from the dates of the reports issued, or such longer period as may be required to satisfy legal and administrative requirements.

S. Pay Or Play

The requirements and terms of the City of Houston Pay or Play program as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Auditor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

IV. DUTIES OF CITY

A. Payment Terms

The City shall pay Auditor for its services at the hourly rate for each applicable category of services as set forth in the Fee Schedule attached hereto as Exhibit "B". The hourly rates for the Basic Services and various job classifications for Special Services listed in Exhibit "B" shall remain in effect through May 31, 2010. Beginning June 1, 2010 and for each renewal year thereafter, if any, Auditor shall be entitled to increase its hourly rates by a percentage not to exceed the increase to the United States Department of Labor Consumer Price Index – All Urban Consumers for the Houston-Galveston-Brazoria, Texas database for the first month of the renewal year as compared to the same month of the preceding contract year, with a maximum percentage not to exceed 5% thereof.

B. Method Of Payment

1) Basic Services Fee.

City shall pay Auditor monthly for Basic Services rendered by Auditor pursuant to this Agreement, on the basis of valid invoices submitted by the Auditor and approved by the Director, showing the hours worked in the preceding month and the corresponding hourly rate.

To be effective, each invoice must include: (1) a summary progress report of hours worked by level of professional for the period covered by the invoice ("the Billing Period") expressed as a percentage of the total estimated Basic Services, and (2) the amount Auditor requests for payment. Payment to Auditor shall be made by the City within 30 days from receipt and approval of such an invoice by the Director. If payment is not received within 30 days from the City's approval date of such invoice, Auditor may follow the provisions for termination as set out in Section V.C of this Agreement.

2) Special Services Fee

- (a) If the City requests any Special Services, the Auditor shall provide the Director with a written estimate of the fees it will charge to provide such services. Upon written approval of the Director and allocation of City funds therefore, Auditor shall proceed with the Special Services. Auditor shall bill the City at the job classification rates for Special Services in accordance with the Fee Schedule in Exhibit B.
- (b) The total actual Special Service Fee billed to the City may exceed the estimate, but shall be no more than \$210,000.00 for the Initial Term and \$70,000.00 for each of the renewal years.
- (c) Auditor shall request payment for Special Services by submitting an invoice to the City in the month following the performance of corresponding services. Invoices shall include an itemization justifying the fees charged for each task. The Special Services Fees shall be paid by the City on or about 30 days after receipt of a valid invoice submitted by the

Auditor and approved by the Director and City Controller. The City agrees that it shall not unreasonably delay or withhold payment or approval for any invoice.

3) Disputed payments

If any of the items in any invoices submitted by the Auditor are disputed by the City for any reason, including lack of supporting documentation, the Director shall temporarily delete the dispute item and pay the remaining amount of the invoice. The Director shall promptly notify the Auditor of the dispute and request clarification and/or remedial action. After the dispute is settled, the Auditor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

C. <u>Taxes</u>

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Auditor's invoices to the City must not contain assessments of any of these taxes. The Director shall furnish the City's exemption certification and federal tax identification number to Auditor if requested.

E. <u>Limit Of Appropriation</u>

- (1) The City's duty to pay money to Auditor under this Agreement is limited in its entirety by the provisions of this Section.
- (2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$500,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate

supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to Auditor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Auditor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Auditor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. <u>Suspension Of Performance</u>

The Director may suspend Auditor's performance under this Agreement, with or without cause, by notifying Auditor in writing. For a period of fifteen days from suspension of the Auditor's

performance under this Agreement and upon mutual agreement by the parties, Auditor shall resume work when directed to do so by the Director, at no additional cost to the City that is directly attributable to (i) the Director's suspension of the Auditor's performance under this Agreement or (ii) the period of suspension set forth above. The City shall not grant any compensation or extension of time under this Section if the suspension results from material non-compliance of Auditor or its subcontractors with any material requirement of this Agreement.

G. <u>City Assistance</u>

The City Controller's Central Financial Reporting and Accounting staff shall be available to render all possible assistance and shall respond promptly to verbal or written requests for information, provide all necessary books and records, detailed trial balances, supporting schedules, account reconciliations, and account analyses and shall provide the necessary coordination with the Information Services Division of Finance to obtain computer support and selective access to computer files. The City Controller's Internal Audit Division shall assist the Auditor to the degree negotiated by both parties. Workpapers and reports on completed internal control evaluations shall be made available to the Auditor upon a written request to the City Controller.

H. Reproduction Services And Workspace

The City shall provide reasonable on-site reproduction services and clerical support. Costs of special or extensive reproduction shall be the responsibility of the Auditor.

The City shall provide reasonable working space to the Auditor in locations maintained by the Finance Department or Controller's Office or other City facilities.

I. <u>City Attorney's Letter</u>

The Director shall cause the City Attorney to issue on request of the Auditor a letter concerning the status of lawsuits, litigation in the discovery stage to various levels of appeal of findings both for and against the City, and other actual or contingent liabilities.

J. <u>Inclusion of Auditor's Reports or References to Auditor in Other Documents or Electronic Sites</u>

If the City intends to publish or otherwise reproduce in any document the Auditor's reports on the City's financial statements, or otherwise make reference to the Auditor in a document that contains other information in addition to the audited financial statements (e.g., in a periodic filing with a regulator, in a debt or equity offering circular or in a private placement memorandum), thereby associating Auditor with such document, the City agrees that prior to making any such use of the Auditor's report, or reference to the Auditor, the Director will provide the Auditor with a draft of the document to read and obtain approval from the Auditor for the inclusion or incorporation by reference of the Auditor's report, or the reference to Auditor, in such document before the document is printed and distributed. The inclusion or incorporation by reference of the Auditor's report in any such document would constitute the reissuance of the Auditor's reports. The City also agrees that City management will notify the Auditor and obtain Auditor's approval prior to including the Auditor's report on an electronic site.

Notwithstanding the foregoing, the City may post its financial statements and Auditor's report thereon to the current City website at www.houstontx.gov, after Auditor has issued its report, provided that the electronic site is controlled by the City, is for informational purposes only, and is

not associated to or referenced in a document in electronic form that contains other information in addition to the audited financial statements (including, but not limited to, a debt or equity offering circular, a private placement memorandum, or other similar offering), and, provided that the City's financial statements (the complete financial statements and related notes thereto for all periods to which Auditor's report relates) and Auditor's report thereon are reproduced in their entirety. Further, the City understands and agrees that Auditor will not be associated with any other information contained on that electronic site. In addition, the City may submit, in electronic form, its financial statements and Auditor's report thereon to the Municipal Securities Rulemaking Board in compliance with the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12; provided that such financial statements and Auditor's report are not published or otherwise reproduced in any document that contains other information in addition to the audited financial statements (including, but not limited to, a debt or equity offering circular, a private placement memorandum, or other similar offering).

The engagement to perform the services described in this Agreement does not constitute the Auditor's agreement to be associated with any such documents published or reproduced by or on behalf of the City. Except as set forth in the preceding paragraph, any request by the City to reissue Auditor's reports, to consent to its inclusion or incorporation by reference in an offering or other document, or to agree to its inclusion on an electronic website will be considered based on the facts and circumstances existing at the time of such request. In the event that the City elects not to obtain the Auditor's consent, the City agrees to include a disclosure in such document that the City has not requested the Auditor to reissue its audited financial statement and that the Auditor has not performed any procedures in connection with the document. The provisions of this paragraph shall

survive the expiration or termination of this Agreement. The estimated fees outlined herein do not include any services that would need to be performed in connection with any such request to make use of the Auditor's report, or reference to the Auditor; fees for such services (and their scope) would be covered under the Special Services set forth in Exhibit "B", and subject to the City's and Auditor's mutual agreement at such time as the Auditor is engaged to perform the services.

K. <u>Management Representations</u>.

Because of the importance of City management's representations, the City agrees to release and indemnify, to the extent allowed by law, the Auditor and its personnel from all claims, liabilities, and expenses relating to the Auditor's services under this Agreement attributable to any misrepresentation by City management.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect until December 31, 2011 ("Initial Term") unless sooner terminated under this Agreement.

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two (2) successive one-year terms upon the same terms and conditions, subject to Auditor's completion of its client and engagement continuance procedures then in effect.

C. <u>Termination By Either Party</u>

Each of the parties may, at any time and for any reason, terminate this Agreement or its performance hereunder immediately upon written notice to the other party. Upon termination, Auditor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Auditor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV, unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE AUDITOR'S ONLY REMEDIES FOR THE TERMINATION HEREOF. AUDITOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION) IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING DIRECTLY FROM THE TERMINATION IN ACCORDANCE WITH THIS SECTION IV (C).

VI. MISCELLANEOUS

A. <u>Independent Contractor</u>

Auditor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Auditor's performance under this Agreement. All personnel Auditor uses or provides are its personnel, employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. It is understood and agreed that neither party is, nor shall be considered to be, an agent, distributor, partner, fiduciary or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create

any obligation on behalf of, or in the name of, the other. Auditor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

B. Force Majeure

- 1. Neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
 - 2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the Force Majeure as quickly as possible;
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect (unless the Force Majeure prevents such party from providing such notice); and
 - (c) provides the other party with written notice describing the actual delay or non-performance incurred within 7 days after the Force Majeure ceases.
- 3. If the Force Majeure continues for more than ten days, the Director may terminate this Agreement by giving 7 days written notice to Auditor. This termination is not a default or breach of this Agreement. AUDITOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING DIRECTLY FROM TERMINATION IN ACCORDANCE WITH THIS SECTION VI (B), EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

4. Auditor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Auditor shall employ only competent and qualified personnel during a strike.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties with respect to this subject matter hereof. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Auditor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. <u>Captions</u>

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Auditor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

J. Inspections

City representatives may, upon reasonable prior written notice, inspect Auditor's time and expense records to the extent necessary to reasonably substantiate payments made hereunder. Any records available to the City under this paragraph may be redacted by the Auditor to the extent necessary to protect its proprietary and confidential information and to avoid any invasion of personal privacy. Auditor shall keep such records available for this purpose for at least three years after this Agreement terminates. This provision does not affect the applicable statute of limitations. For the avoidance of doubt, this provision shall not apply to the Auditor's working papers.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations of the City under this Agreement without further authorization from the City Council. Auditor shall provide the City Attorney all documents and records reasonably necessary to substantiate payments made hereunder. In the event of litigation between the parties with respect to this Agreement, nothing in this Agreement shall prevent the City from obtaining from Auditor any and all documents and records to which the City is otherwise legally entitled to through proceeds of discovery.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Auditor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director. The City does, however, grant the Auditor the right to use the City's name as part of a general client list and as a specific citation within proposals and other directed marketing efforts, unless the Director directs otherwise.

O. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Auditor only.

P. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. <u>Business Structure and Assignments</u>

Auditor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Auditor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Except as provided below, Auditor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent. The Director hereby consents to Auditor subcontracting a portion of its services under this Agreement to the member firms of Deloitte Touche Tohmatsu and their respective affiliates, whether located within or outside of the United States. Professional services performed hereunder by any of Auditor's affiliates or related entities shall be invoiced as professional fees, and any related expenses shall be invoiced as expenses, unless otherwise agreed.

The City may not assign, transfer, or delegate any of its rights or obligations relating to this Agreement (including, without limitation, interests or claims relating to this Agreement) without the prior written consent of Auditor.

R. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

S. <u>Limitation of Liability</u>

Auditor shall not be liable for any amounts representing loss of profit, loss of business or special, consequential, incidental, indirect, exemplary or punitive damages. Furthermore, Auditor and its personnel shall not be liable to the City for any claims, liabilities, or expenses relating to this Agreement or any Engagement Letter for an aggregate amount in excess of \$2,000,000.00 for each City's fiscal year during the term of this Agreement during which such claims, liabilities, or expenses

accrued, without regard to which year of the term hereof such claims, liabilities, or expenses were made or discovered by the City.

T. AUDITOR DEBT

IF AUDITOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING UPON THE AUDITOR'S ENGAGEMENT LEADER BECOMES AWARE OF SUCH DEBT. IF THE CITY CONTROLLER BECOMES AWARE THAT AUDITOR HAS INCURRED A DEBT, HE/SHE SHALL IMMEDIATELY NOTIFY AUDITOR IN WRITING. IF AUDITOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO AUDITOR UNDER THIS AGREEMENT, AND AUDITOR WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"

SCOPE OF SERVICES

- I. <u>BASIC SERVICES</u> The Basic Services to be performed under any Engagement Letter shall be set forth in such Engagement Letter. Such Basic Services may include, but are not necessarily limited to:
 - A. Task 1: Audit of Comprehensive Annual Financial Report (CAFR) commencing with fiscal year beginning July 1, 2008.
 - 1. Auditor shall conduct financial audits of the City's basic financial statements and this task shall be performed as described in the Engagement Letter.
 - 2. In conjunction with its annual financial audit, the Auditor shall perform compliance audit procedures on investments, adherence to the City's established investment policies and the quarterly reports prepared by the investment manager. Significant compliance deficiencies shall be reported to the Audit Committee.
 - 3. The Auditor shall advise the City Controller as the City Controller prepares and compiles the Comprehensive Annual Financial Report (CAFR).
 - 4. The Auditor shall perform agreed-upon procedures to determine whether the City meets the financial assurance requirements of the Texas Commission on Environmental Quality (TCEQ).
 - 5. Auditor shall prepare a management recommendation letter. The letter may communicate opportunities for the City to improve the economy and efficiencies of the City financial management practices that come to the Auditors attention during the audit process. Prior to issuance, the Auditor shall review the proposed draft letter with the Director of Finance and the City Controller. Subsequent to issuance, the Auditor shall review the final letter with the Mayor and City Council, if requested to do so. At the request of the City and, within 90 days after the issuance of the management recommendation letter, the Auditor shall evaluate the quality of the implementation of all agreed-to recommendations and submit a report on the status and condition of implementation to the Director of Finance and the City Controller.

B. Task 2: Single Audit Federal Financial Awards Programs

1. In conjunction with the CAFR financial audit, the Auditor shall perform an audit of federal awards under the Single Audit Act, 1996, as amended, Office of Management and Budget (OMB) Circular A-133, dated 1997 and any

- amendments or supplements thereto. Successor publications will also apply in addition to the Auditor requirements of 0MB Circular A-133.
- 2. At the request of the Director, the Auditor shall conduct follow-ups on corrective actions taken by the City ninety (90) days after issuance of the final audit report, evaluate the City's progress in correcting the problems, and separately report the findings to the Director of Finance and to the City Controller.
- 3. At the request of the Director, the Auditor shall follow-up on single-audit findings and recommendations to ascertain that resolution has been achieved. The Auditor shall submit a report to the Director and City Controller on the quality and timeliness of individual resolution decisions.

C. <u>Task 3</u>: <u>State of Texas Uniform Grant Management Standards (UGMS)</u>

- 1. In conjunction with the CAFR audit, the Auditor shall also perform auditing procedures on the City's state programs in accordance with the provisions of the State of Texas Uniform Grant Management Standards.
- 2. Prior to the City publication of the State Single Audit Report, the Auditor shall evaluate the proposed Plan for Corrective Action.
- 3. At the request of the Director, the Auditor shall conduct follow-up on corrective actions taken by the City ninety (90) days after issuance of the final audit report, evaluate the City's progress in correcting the problems and report separate findings to the Director of Finance and the City Controller.
- 4. At the request of the Director, the Auditor shall conduct follow-ups on State single audit findings and recommendations to ascertain that resolution has been achieved. The Auditor shall submit a report to the Director and City Controller on the quality and timeliness of individual resolution decisions.

II. SPECIAL SERVICES

Special Services shall be requested in a written notice signed by the Mayor or designee only if City Council has allocated sufficient funds to pay for these Services. The Special Services to be performed under any Engagement Letter shall be set forth in such Engagement Letter. Such Special Services may include, but are not necessarily limited to:

A. Determine whether the City is in compliance with the significant financial and accounting requirements of ordinances pertaining to the revenue bonds associated with the various enterprise funds. The documents requiring a report are:

- 1) Convention & Entertainment Facilities Department -Schedule of Pledged Revenues and Debt Service Requirements;
- 2) Airport Schedule of Overhead and Direct Charges; Schedule of Gross Revenues, Net Revenues, and Debt Service Requirements;
- 3) Water and Sewer Schedule of Gross Revenues, Net Revenues and Debt Service Requirements;
- B. <u>Selected Audits/Reviews/Corrective Action Plans</u>. The Auditor may be requested to conduct financial audits, and/or corrective action plans and reviews of City activities and funds.
- C. Other Audits. The Auditor shall furnish all services and materials necessary for the performance of financial and compliance audits of any fund, department, or division operations of the City not included in the Scope of Services for Basic Services.
- D. <u>Travel</u>. The Auditor shall journey to places outside Harris County, Texas in connection with any Special Services.
- E. <u>Expert Witness</u>. The Auditor may be requested to assist the City as an expert witness in litigation with third parties or administrative proceedings.
- F. <u>Special Investigations or Studies</u>. The Auditor may be requested to conduct special investigations or studies within the Auditor's expertise, but not specified as a Basic Service.
- G. Bond and Note Offerings. The Auditor shall furnish all services and materials necessary to render awareness letters or other requested services for use in connection with the sale of bonds, notes, etc.; advise the City in connection with such work and in connection with the preparation of various official statements relating thereto. Upon the mutual agreement of the parties, the Auditor may furnish services described in this paragraph under an existing Engagement Letter in lieu of an engagement letter entered into solely with respect to such services. In a typical year, the City will have four or more types of offerings, including but not limited to:

- 1) Tax and revenue anticipation notes for General Fund cash flow;
- 2) Public improvement bond issues;
- 3) Utility system issues; and
- 4) Airport system bond issues.
- H. <u>Conferences</u>. The Auditor shall attend periodic conferences with City officials and regulatory officials.
- I. Quality Control Review ("QCR"). The Auditor may be requested to evaluate the work of other CPA firms engaged by the City. Such QCR will be provided for within the other CPA firm's contract with the City and may be performed in conjunction with members of the City, Auditor's or federal cognizant audit agency staffs.
- J. <u>Governmental Accounting Standards Board</u>. The Auditor may be requested to furnish services and materials necessary or proper for the performance of reviewing the City's planning, preparation and implementation of GASB pronouncements.
- K. Any other services requested.

EXHIBT "B"

FEE SCHEDULE

ITEM NO.	EST. QTY.	DESCRIPTION	UNIT COST	UNIT TOTAL
Annual Audit	9,500 HRS	Financial Audit for FY2009	\$158 / hr	\$1,501,000.00
Special Services	TBD	Partner/Director	\$330 / hr	TBD
Special Services	TBD	Sr. Manager/Manager	\$290 / hr	TBD
Special Services	TBD	Supervisory Staff	\$200 / hr	TBD
Special Services	TBD	Staff	\$175 / hr	TBD

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

- 1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
- 2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
- 3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
- 5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
- 6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
- 7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"

MWBE SUBCONTRACT TERMS

Auditor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

(MWBE subcontractor) shall not delegate or subcontract

	er this subcontract to any other subcontractor or supplier without the express suston's Affirmative Action Director ("the Director").
2.	(MWBE subcontractor) shall permit representatives of the
City of Houston, at all reasonable	e times, to perform (1) audits of subcontractor's books and records, and (2)
	vork is to be undertaken in connection with this subcontract. Subcontractor
	available for inspection for at least 4 years after the end of its performance
under this subcontract. Nothing	in this provision shall change the time for bringing a cause of action.

- 3. Within 5 business days of execution of this subcontract, Auditor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.
- 4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:
- a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.
- b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.
- c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
- d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
- e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

1.

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

١, .	Ross T. Johns	on Director	as an owner or officer of
	(Name) (Print/Type)	(Title)	
	Deloitte : T	Suche LLP	(Contractor)
			f Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that tContractor be bound by and agree to designate appropriate safety impact positions for company employee positions[D&T: WHAT IS THIS?], and to comply with the following requirements before the City issues a notice to proceed:

- Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor[D&T: LET'S DISCUSS] that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).] [D&T: DO WE HAVE THESE DOCUMENTS? PLEASE PROVIDE]
- 2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.[D&T: LET'S DISCUSS]
- 3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.[D&T: LET'S DISCUSS]
- 4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

<u>517109</u>

Deloitte : ToucheLLF
Contractor Name

Signature

Title

EXHIBIT "F"

CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT

1, Ross T. Johnson	Director
(Name)	(Title)
as an owner or officer of	(Name of Company) (Contractor)
	pect to its bid, and hereby certify that Contractor has no §5.18 of Executive Order No. 1-31, that will be involved
in performing Professional	(Project)
Contractor agrees and covenants that it shall im any safety impact positions are established to p	mediately notify the City of Houston Director of Personnel is rovide services in performing this City Contract.
517169 (Date)	(Typed or Printed Name)
(200)	(Signature)
	Mrector (Title)

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

l,			as an owner or	officer of	
(Name	e) (Print/Type)	(Title)			
			(C	contractor)	
		(Name of Co	ompany)		
have personal l	knowledge and full a	uthority to make the followin	g declarations:		
This reporting p	period covers the pre	ceding 6 months from	to	, 20	
Initials	A written Drug Free The policy meets the (Mayor's Policy).	Workplace Policy has been e criteria established by the l	n implemented and Mayor's Amended	employees notified. Policy on Drug Detection and Deterr	ence
Initials	Written drug testing Drug Detection and notified of such prod	procedures have been imp Deterrence Procedures for C cedures.	lemented in confor Contractors, Execut	mity with the Mayor's ive Order No. 1-31. Employees have	been
Initials	Collection/testing has Services (HHS) guid	as been conducted in compl delines.	iance with federal	Health and Human	
Initials	performing on the C	mpact positions have been of ity of Houston contract. The	number of employ	ployee positions vees in safety impact positions during	g this
Initials	From(Start date)	to(End dat	_ the following test te)	has occurred	
		Reason <u>Random</u> <u>Suspici</u>		<u>Total</u>	
Number Employ	ees Tested				
Number Employ	ees Positive				
Percent Employe	ees Positive				
Initials	Any employee who to consistent with the M	ested positive was immedia Mayor's Policy and Executive	tely removed from e Order No. 1-31.	the City worksite	
Initials	I affirm that falsificat established guideline	ion or failure to submit this c es will be considered a brea	declaration timely in ch of contract.	n accordance with	
l declare under p my personal kno	penalty of perjury that owledge and are true	the affirmations made herei and correct.	in and all informatio	on contained in this declaration are w	ithin
(Date)			(Typed or Printed	Name)	
			(Signature)		
			(Title)		

EXHIBIT "H"

FORM OF ENGAGEMENT LETTER FOR BASIC SERVICES

[]
Mayor [] City of Houston P.O. Box 1562 Houston, TX 77251
[] Director of Finance City of Houston, Texas 611 Walker, 10 th Floor
Houston, Texas 77002
Dear Mayor []:
Deloitte & Touche LLP ("D&T" or "we" or "us") is pleased to serve as independent auditors for the City of Houston, Texas (the "City"). [] will be responsible for the services that we perform for the City hereunder.
In addition to the audit services we are engaged to provide under this engagement letter, we would also be pleased to assist the City on issues as they arise throughout the year. Hence, we hope that you will call [] whenever you believe D&T can be of assistance.
The services to be performed by D&T pursuant to this engagement are subject to the terms and conditions of the Agreement, dated as of [] between the City and D&T (the "Agreement") and the terms and conditions set forth herein and in the accompanying appendices hereto. The terms and conditions hereof shall be effective as of the date of the commencement of the services described herein.
Audit of Financial Statements and Other Reporting
Our engagement is to perform an audit in accordance with auditing standards generally accepted in the United States of America ("generally accepted auditing standards") and the standards applicable to financial audits contained in <i>Government Auditing Standards</i> , issued by the Comptroller General of the United States ("generally accepted government auditing standards"). The objectives of an audit conducted in accordance with the aforementioned standards are to:
• Express an opinion on the fairness of the presentation of each opinion unit in the City's basic financial statements, and to disclaim an opinion on the required supplementary information for the year ending June 30, [], in conformity with accounting principles generally accepted in the United States of America ("generally accepted accounting principles"), in all material respects

•	Express an opinion on whether the supplementary information that accompanies the basic financial statements, are
	presented fairly, in all material respects, in relation to the basic financial statements taken as a whole

- Report on the City's internal control over financial reporting and on its compliance with certain provisions of laws, regulations, contracts, and grants and other matters for the year ending June 30, [_____] based on an audit of financial statements performed in accordance with the standards applicable to financial audits contained in generally accepted government auditing standards
- Report on the City's compliance with requirements applicable to each major program and on internal control over compliance in accordance with the U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement ("OMB Circular A-133").

Appendix A contains a description of our responsibilities and an audit under generally accepted auditing standards, generally accepted government auditing standards, and OMB Circular A-133.

Our ability to express an opinion and the wording thereof will, of course, be dependent on the facts and circumstances at the date of our report. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or decline to issue a report as a result of this engagement. If we are unable to complete our audit or if the report to be issued by D&T as a result of this engagement requires modification, the reasons therefor will be discussed with Mayor and the City's management.

Our reports on the City's internal control and compliance and other matters will state that they are intended solely for the information and use of Mayor, City Council of the City of Houston ("City Council"), management, federal and state awarding agencies, and pass-through entities and are not intended to be and should not be used by anyone other than these specified parties.

Management's Responsibilities

Appendix B describes management's responsibilities for (1) the basic financial statements and all accompanying information, (2) representation letters, (3) independence matters relating to providing certain services, and (4) independence matters relating to hiring.

Responsibility of the Mayor and City Council

As independent auditors of the City, we acknowledge that the Mayor and City Council are directly responsible for the appointment, compensation, and oversight of our work, and accordingly, except as otherwise specifically noted, we will report directly to the Mayor and City Council. You have advised us that the services to be performed under this engagement letter, including, where applicable, the use by D&T of affiliates or related entities, and the use by D&T of approved Minority/Women/Disadvantaged Business Enterprise ("M/W/DBE") as listed by the City's Affirmative Action and Contract Compliance Department, as subcontractors in connection with this engagement, have been approved by the Mayor and City Council in accordance with the City's established preapproval policies and procedures.

Communications With the Mayor and City Council

Appendix C describes various matters that we are required by generally accepted auditing standards and generally accepted government auditing standards to communicate with the Mayor and City Council and management.

-	_	_	•

We estimate that our fees for the audit of the City's basic financial statements will be \$[] b	pased upon an estimate of
[] professional hours at \$[] / hour.	

We will notify you promptly of any circumstances we encounter that could significantly affect our estimate and discuss with you any additional fees, as necessary. Additional services provided beyond the described scope of services described herein will be billed separately.

This engagement letter together with the Agreement, including the appendices attached hereto and made a part hereof, constitutes the entire agreement between the parties with respect to this engagement and supersedes all other prior and contemporaneous agreements or understandings between the parties, whether written or oral, relating to this engagement.

If the above terms are acceptable and the services outlined are in accordance with your understanding, please sign the copy of this engagement letter in the space provided and return it to us.

Yours truly,

Acknowledged and approved on behalf of
The Mayor of the City of Houston, Texas:
Ву:
Title:
Date:
Accepted and agreed to by the City of Houston, Texas:
Ву:
Title:

DESCRIPTION OF OUR RESPO	NSIBILITIES AND AN AU	JDIT UNDER GENERAL	LY ACCEPTED AUDITING
STANDARDS, GENERALLY AG	CCEPTED GOVERNMENT	Γ AUDITING STANDARI	OS, AND OMB CIRCULAR A-
133			
CITY OF HOUSTON, TEXAS			
YEAR ENDING HINE 30 [1		

Our Responsibilities

Our responsibilities under generally accepted auditing standards and generally accepted government auditing standards include:

- Forming and expressing an opinion about whether the basic financial statements that have been prepared by management with the oversight of the Mayor and City Council are presented fairly, in all material respects, in conformity with generally accepted accounting principles
- Reporting on the scope and results of testing of the City's internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant agreements.

The audit of the basic financial statements does not relieve management or the Mayor and City Council of their responsibilities.

Components of an Audit in Accordance With Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards, UGMS and OMB Circular A-133

An audit includes the following:

- Obtaining an understanding of the City and its environment, including internal control, sufficient to assess the risks
 of material misstatement of the basic financial statements and to design the nature, timing, and extent of further
 audit procedures
- Consideration of internal control over financial reporting, as a basis for designing audit procedures that are
 appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the City's
 internal control over financial reporting
- Consideration of internal control and compliance over major federal and state programs, as a basis for determining the City's internal control over compliance with federal and state laws and other laws and regulations
- Examining, on a test basis, evidence supporting the amounts and disclosures in the basic financial statements
- Inquiring directly of the Mayor regarding its views about the risk of fraud and whether the Mayor has knowledge of any fraud or suspected fraud affecting the City
- Assessing the accounting principles used and significant estimates made by management
- Evaluating the overall basic financial statement presentation
- Determining which federal and state programs should be considered major programs and thus be included within the scope of the compliance audit
- Evaluating the overall presentation of the schedule of expenditures of federal and state as well as required

supplementary information of the Governmental Accounting Standards Board in relation to the basic financial statements taken as a whole

- Evaluating the items to be included in the schedule of findings and questioned costs and the reasonableness of the summary schedule of prior year findings
- Obtaining and reporting the views of responsible officials concerning the findings, conclusions, and recommendations, as well as their planned corrective actions
- Preparing a schedule of findings and questioned costs
- Completing the auditor prepared sections of and signing the OMB Data Collection Form that summarizes our audit findings prior to its submission to the Federal Bureau of the Census.

We will also perform tests of the City's compliance with certain provisions of laws, regulations, and the provisions of contracts and grant agreements. However, it is not our objective to provide an opinion on overall compliance with those provisions and, accordingly, we will not express such an opinion.

As part of our audit of compliance with the requirements of major federal and state programs, we will obtain an understanding of the City's internal control related to administering major federal and state programs and we will assess risk as required by OMB Circular A-133 for the purpose of establishing the nature, timing, and extent of auditing procedures necessary for expressing an opinion concerning compliance with laws and regulations related to major federal and state award programs.

Generally accepted accounting principles provide for certain required supplementary information (RSI), such as a management's discussion and analysis, to accompany the City's basic financial statements. As part of our engagement, we will apply certain limited procedures to the City's RSI. Those limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management will affirm to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with our procedures relating to it, we will disclaim an opinion on the RSI.

Supplementary information other than RSI, such as pension information data, also accompany the City's basic financial statements. We will subject all supplementary information that is financially oriented to the audit procedures applied in our audit of the basic financial statements and render our opinion on whether that information is fairly presented, in all material respects, in relation to the basic financial statements taken as a whole. We will disclaim an opinion on supplementary information that comprises nonaccounting information or accounting information not directly related to the basic financial statements. We will also make specific inquiries of management about supplementary information, which management will affirm to us in its representation letter.

Reasonable Assurance

We will plan and perform our audit to obtain reasonable assurance about whether the basic financial statements are free of material misstatement, whether caused by error or fraud, and we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts, and grants. However, because of the characteristics of fraud, a properly planned and performed audit may not detect a material misstatement. Therefore, an audit conducted in accordance with generally accepted auditing standards and generally accepted government auditing standards is designed to obtain reasonable, rather than absolute, assurance that the basic financial statements are free of material misstatement. An audit is not designed to detect error or fraud that is immaterial to the basic financial statements, nor is it designed to provide assurance on internal control or to identify deficiencies in internal control or to detect immaterial instances of noncompliance.

We will also plan and perform our audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements that are applicable to the City's major federal and state programs could have a direct and material

effect on each of its major federal and state programs. An audit of compliance includes examining, on a test basis, evidence about the City's compliance with those requirements and performing such other procedures as we consider necessary in the circumstances. Our audit does not provide a legal determination on the City's compliance with those requirements.

MANAGEMENT'S RESPONSIBILITIES	
CITY OF HOUSTON, TEXAS	
YEAR ENDING ENDED JUNE 30, [

Financial Statements, Internal Control, and Compliance

The overall accuracy of the basic financial statements and all accompanying information and their conformity with generally accepted accounting principles is the responsibility of the City's management. In this regard, management has the responsibility for, among other things:

- Selecting and applying the accounting policies.
- Establishing and maintaining effective internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant agreements.
- Designing and implementing programs and controls to prevent and detect fraud.
- Identifying and ensuring that the City complies with the laws and regulations applicable to its activities and the
 provisions of contracts or grant agreements, and informing us of any known material violations of such laws,
 regulations, or provisions.
- Adjusting the basic financial statements to correct material misstatements.
- Making all financial records and related information available to us.
- Taking timely and appropriate steps to remedy fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that we report.
- Having a process to track the status of audit findings and recommendations.
- Identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of our audit and the corrective actions taken to address significant findings and recommendations.
- Providing its view on our current findings, conclusions, and recommendations, as well as management's planned corrective actions, for our reports. The corrective action plan that the City develops for its OMB Circular A-133 reporting package may fully or partially satisfy this responsibility.
- Submitting the reporting package and OMB Data Collection Form to the Federal Bureau of the Census.

Representation Letters

We will make specific inquiries of the City's management about the representations (1) embodied in the basic financial statements and all accompanying information, (2) regarding the effectiveness of internal control, and (3) regarding the City's compliance with laws, regulations, and the provisions of contracts and grant agreements. Additionally, we will request that management provide to us the written representations the City is required to provide to its independent auditors under generally accepted auditing standards. As part of our audit procedures, we will request that management provide us with a representation letter that includes, among other things:

• Acknowledgment of management's responsibility for the preparation of the basic financial statements, all accompanying information, and for compliance with laws and regulations applicable to federal and state award

programs

- Acknowledgment of management's responsibility for the design and implementation of programs and controls to prevent and detect fraud
- Affirmation of management's knowledge of any fraud or suspected fraud affecting the City involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the basic financial statements
- Affirmation of management's knowledge of any allegations of fraud or suspected fraud affecting the City
- Affirmation of management's belief that the effects of any uncorrected financial statement misstatements aggregated by us during the current audit engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the basic financial statements.

We will also request that management confirm certain representations made to us during our audit. The responses to those inquiries and related written representations of management required by generally accepted auditing standards are part of the evidential matter that D&T will rely on in forming its opinion on the City's basic financial statements.

Independence Matters Relating to Providing Certain Services

In connection with our engagement, D&T, management, and the Mayor and City Council will assume certain roles and responsibilities in an effort to assist D&T in maintaining independence. Management of the City will ensure that the City has policies and procedures in place for the purpose of ensuring that the City will not act to engage D&T or accept from D&T any service that under American Institute of Certified Public Accountants (AICPA), generally accepted government auditing standards, or other applicable rules would impair D&T's independence. All potential services are to be discussed with Mr..

Independence Matters Relating to Hiring

Management will coordinate with D&T to ensure that D&T's independence is not impaired by hiring former or current D&T partners, principals, or professional employees in a key position, as defined in the AICPA *Code of Professional Conduct*, that would cause a violation of the AICPA *Code of Professional Conduct* or other applicable independence rules. Any employment opportunities with the City for a former or current D&T partner, principal, or professional employee should be discussed with Mr. [_____] before entering into substantive employment conversations with the former or current D&T partner, principal, or professional employee.

For purposes of the preceding two paragraphs, "D&T" shall mean Deloitte & Touche LLP and its subsidiaries; Deloitte Touche Tohmatsu, its member firms, the affiliates of Deloitte & Touche LLP, Deloitte Touche Tohmatsu, and its member firms; and, in all cases, any successor or assignee.

COMMUNICATIONS WITH THE	MAYOR AND CITY COUNCIL
CITY OF HOUSTON, TEXAS	
YEAR ENDING JUNE 30. [1

Significant Matters

We are responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to the responsibilities of the Mayor and City Council in overseeing the financial reporting process.

Fraud and Illegal Acts

We will report directly to the Mayor and City Council any fraud of which we become aware that involves senior management, and any fraud (whether caused by senior management or other employees) of which we become aware that causes a material misstatement of the basic financial statements. We will report to senior management any fraud perpetrated by lower level employees of which we become aware that does not cause a material misstatement of the basic financial statements; however, we will not report such matters directly to the Mayor and City Council, unless otherwise directed by the Mayor and City Council.

We will inform the appropriate level of management of the City and determine that the Mayor and City Council is adequately informed with respect to illegal acts that have been detected or have otherwise come to our attention in the course of our audit, unless the illegal acts are clearly inconsequential.

Internal Control Matters

We will report directly to management and the Mayor and City Council all significant deficiencies and material weaknesses identified during the audit as required by AU 325, Communicating Internal Control Related Matters Identified in an Audit, and generally accepted government auditing standards. Our written communication will identify those matters considered by D&T to be significant deficiencies and those that are considered by D&T to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented, or detected and corrected on a timely basis.

We will also communicate certain matters to management and the Mayor and City Council, including our responsibilities for testing and reporting on internal control over financial reporting and on compliance with laws, regulations, and provisions of contracts or grant agreements, both for our financial statement audit and our compliance audit of major federal and state programs.

Other Matters

We will communicate to management and the Mayor and City Council the following, if any of the following are identified during our audits: material noncompliance with laws, regulations, and provisions of contracts or grant agreements related to major programs; certain known questioned costs; fraud affecting federal and state awards; abuse that is material to a federal and state program; and other federal and state award audit findings as required by generally accepted government auditing standards and OMB Circular A-133.

Generally accepted auditing standards and generally accepted government auditing standards do not require us to design procedures for the purpose of identifying other matters to communicate with the Mayor and City Council. However, we will communicate to the Mayor and City Council matters required by AU 380, *The Auditor's Communication With Those Charged With Governance*. In addition, as required by generally accepted government auditing standards, our report on

internal control and on compliance and other matters will include our findings of material violations of provisions of contracts and grant agreements and material abuse.

In planning the audit, we will follow up on known significant findings and recommendations from previous financial audits, attestation engagements, performance audits, or other studies that directly relate to the objectives of the current audit to determine the effect on our risk assessment and audit procedures.

As part of our audit, we will be alert to situations or transactions that could be indicative of abuse as defined by generally accepted government auditing standards, which involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. This determination of abuse is subjective; generally accepted government auditing standards do not require us to provide reasonable assurance of detecting abuse, and we will not design the audit to detect abuse. However, if we become aware of indications of material abuse, we will apply procedures to ascertain whether abuse has occurred. Under generally accepted auditing standards and generally accepted government auditing standards, we may be required to directly report fraud, illegal acts, violations of provisions of contracts or grant agreements, and abuse to outside parties.

We may also communicate to management and the Mayor and City Council on internal control, compliance, or other matters we have observed and possible ways to improve the City's operational efficiency and effectiveness or otherwise improve its internal control or other policies and procedures.

With respect to these other communications, the Auditor shall discuss all comments, if appropriate, with the level of City management responsible for these matters, prior to their communication to senior management and/or the Audit Committee.

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